

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.21029 OF 1994

DATED: 23-01-2007

Between:

S. Bikshapathi and another

.. Petitioners

and

The Government of Andhra Pradesh
represented by its Special
Secretary, Finance and Planning
(FW.PC.III) Department and
others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.21029 OF 1994

ORDER:

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_____ This writ petition is filed seeking a mandamus declaring the action of the 2nd respondent in not absorbing and regularizing the services of the petitioners in Class IV Posts as arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India.

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_____ It appears, the petitioners 1 and 2 were appointed as Watchmen with effect from 23-06-1988 and 23-08-1988 respectively in Kakatiya Medical College Women's Hostel, Warangal and they have been paid a consolidated salary of Rs.500/- per month. As on the date of filing of the writ petition, they have completed more than six years of service. Since their services were not regularized as per the terms of G.O.Ms.No.212 dated 22-04-1994, the present writ petition is filed.

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_____ It is also their case that some posts of Sweepers, Watchmen, Scavengers, Office Attenders, Cook etc. have fallen vacant in the 2nd respondent's College. When the petitioners approached the 2nd respondent to consider their cases for absorption in the said posts since they have put in five years of service, the 2nd respondent informed them that he would appoint outsiders including the persons sponsored by the Employment Exchange.

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_____ A detailed-counter affidavit has been filed on behalf of the 1st respondent stating that it has been ascertained from

the Principal of Kakatiya Medical College, Warangal that the petitioners are not Government employees either contingent or NMRs and were not appointed by the Principal of Kakatiya Medical College, Warangal. They are working in the Women's Hostel of Kakatiya Medical College, which is run by the students themselves. Their wages are being paid by the students only by their contribution. They are not working against sanctioned posts of College Establishment and their names are not on the pay rolls of the College. It is also further stated that it has been ascertained by the Principal of Kakatiya Medical College that there are certain vacant posts of Watchmen for which selection has to be made among the candidates sponsored by the Employment Exchange, Warangal. Further appointment to such posts has to be made in accordance with Section 4 (3) of A.P. (Regularisation of Appointments to Public Service and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 1994). As and when vacancies are notified to the Employment Exchange, the petitioners will have to take a chance along with others, provided their names are sponsored by the Employment Exchange. Since they were not appointed to any post in the College Establishment against the sanctioned posts, the question of their absorption or regularization does not arise.

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A separate counter-affidavit has also been filed by the 2nd respondent stating that the question of regularization or absorption of the petitioners does not arise due to the reason that the selection has to be made among the

candidates sponsored by Employment Exchange, Warangal.
All appointments for sanctioned posts of College
Establishment are made through selection from the list of
candidates sponsored by Employment Exchange. No
appointments against sanctioned posts were made without
the media of Employment Exchange. If the names of the
petitioners are sponsored by the Employment Exchange,
they will be selected on the basis of merit. The petitioners
are working in a hostel, which is managed by its students,
and their appointment is purely a private appointment.
Principal is no way involved in their appointment in the
hostel. The principal is only a Chief Warden of the hostel
and has overall supervision.

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The learned counsel for the petitioners submitted that
once it is accepted that the Principal is the Chief Warden of
the hostel and has overall supervision, it must be deemed
that the petitioners are working under the 2nd respondent
and the 2nd respondent cannot absolve their responsibility
of considering the case of the petitioners as per
G.O.Ms.No.212.

The learned counsel for the petitioners in this regard
relied upon a Judgment in **G.B. Pant University of**
Agriculture & Technology, Pantnagar, Nainital ..
Appellant vs. State of U.P. and others ..
Respondents ^[1] wherein it was held that the cafeteria
required by regulations has to be maintained in a
residential University and to be compulsorily used by the
resident-students, workers of such cafeteria were held as

employees of the University. The tests of implicit obligation and overall control and supervision were applied to determine the issue.

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The learned counsel for the petitioners states that in this case also, such a statement was made by the 2nd respondent. Further, the hostel is maintained by the College itself. Therefore, the petitioners must be treated as employees of the College. I am in full agreement with the submission made by the learned counsel for the petitioners.

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In this regard, the learned counsel for the petitioners also relied upon a Judgment in **K. Varaha Narasimhulu and others vs. Registrar, Sri Venkateswara University, Tirupathi and others** ^[2] wherein it was held that the canteen employees of the respondent-university hostels are being paid from out of the amounts collected from the boarders. But, it is not for this Court to enquire into from what source those petitioners are being paid for all these years. The fact remains that the university being a residential university, it is under an obligation to maintain the hostels to provide food and shelter to the boarding students prosecuting their studies in the university and it cannot escape from its obligation in establishing and maintaining the hostels and to provide accommodation and supply food as no outsider is allowed to run the canteens or hostels in the University campus. Exactly the same situation arises in the present case also. Therefore, the respondents cannot shirk their responsibility by merely saying that the petitioners are not the employees of the College and they are being paid by the boarders.

There is no dispute that the petitioners are working since 23-06-1988 and 23-08-1988 respectively.

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The learned counsel appearing for the 5th respondent-University states that so far as the University is concerned, it has no responsibility to either maintain the hostel in the Kakatiya Medical College or to regulate the service conditions of the petitioners. May be the University is not concerned and they have no responsibility, but, it cannot shirk their responsibility in regulating the activities of the College and it should not allow the College to run on its own whims and fancies.

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Therefore, I deem it appropriate to direct the respondents to consider the case of the petitioners as per the terms of G.O.Ms.No.212 dated 22-04-1994 for being absorbed in any existing or future vacancies as per law. However, the services of the petitioners shall be continued on the same terms and conditions as of now till such time.

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With the above directions, the writ petition is disposed of. There shall be no order as to costs.

C.V. RAMULU, J

23rd January 2007.
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[\[1\]](#) 2000 (7) SCC 109

[\[2\]](#) 2001 (1) ALT 743